

AMENDED IN ASSEMBLY AUGUST 6, 2012

AMENDED IN ASSEMBLY JULY 3, 2012

AMENDED IN ASSEMBLY MAY 15, 2012

AMENDED IN SENATE JANUARY 23, 2012

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE MAY 2, 2011

SENATE BILL

No. 592

Introduced by Senator Harman

February 17, 2011

An act to amend Sections 57401, 57402, 57405, and 57413 of, to repeal Section 57412 of, and to repeal and add Section 57406 of, the Food and Agricultural Code, relating to dairy cattle supply liens.

LEGISLATIVE COUNSEL'S DIGEST

SB 592, as amended, Harman. Dairy cattle supply liens.

(1) Existing law provides that a person who provides feed or materials to aid the raising or maintaining of dairy cattle has a lien upon the proceeds of the milk or milk products produced from the dairy cattle, for the reasonable or agreed charges for the feed or materials provided and for the costs of enforcing the lien, not to exceed an amount equal to charges for feed or material provided within a 45-day period.

This bill would, in addition, provide that a person who provides feed or materials to aid the offspring of the dairy cattle has a lien on the proceeds of milk or milk products produced from the dairy cattle, and would increase the limit of a lien to an amount equal to charges for feed

or material provided within a 60-day period. The bill would establish a limit of one lien per dairy producer per affiliated business entity.

(2) Existing law provides that the lien shall be perfected and shall be effective upon the filing of a notice of claim of lien with the Secretary of State, as specified. Existing law requires the notice of claim of lien, among other things, to state the name and address of the lien debtor. The notice of claim of lien is required to be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

This bill would instead require the lien to be perfected by filing a notice of claim of lien with the Secretary of State and service of the notice of claim of lien, as specified. The bill would require the notice of claim of lien to state the last known name and address of the lien debtor. The bill would also delete the language providing that the notice of claim of lien shall be signed by the lien claimant or by a person authorized to sign documents of a similar kind on behalf of the claimant.

(3) Existing law requires the lien claimant to provide written notice of the claim of the lien to the lien debtor within 10 days of the date of filing with the Secretary of State.

This bill would require the notice to be provided to the lien debtor, to any person from which the lien claimant has received, before the lien claimant files the notice, notification of a claim of interest in the proceeds, and to any other secured party or lienholder that held a security interest in or other lien on the proceeds, as specified, 10 days before the filing of the notice. The bill would require notice to be served, as specified, depending on whether the lien debtor is an entity, individual, or general partnership. The bill would also require a lien claimant to send to a lien debtor a termination statement for the notice of claim of lien or to file the termination statement in the office of the Secretary of State within 20 days after receiving a demand from a lien debtor if the lien has terminated, as specified.

(4) Existing law requires these liens to have a certain priority, as specified.

This bill would delete the requirement that the lien have priority in accordance with the time the notice of claim of lien is filed. The bill would instead make applicable to dairy cattle supply liens specified statutes governing secured transactions generally, including a provision requiring that conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection, as specified.

(5) Existing law requires a lien claimant to provide written notice to secured creditors, as defined, at least 30 days prior to enforcing a claim of lien.

This bill would delete those provisions.

(6) Existing law requires the lien claimant to foreclose on a lien only in an action to recover the reasonable or agreed charges for feed and materials delivered and enforce a final judgment as provided.

This bill would instead authorize the lien claimant to foreclose on a lien, after payment default by the lien debtor, in an action to recover the reasonable or agreed charges for feed and materials delivered and authorize the lien claimant to enforce a final judgment, as provided, and apply for a right to attach order and a writ of attachment, or temporary protective order, through the court in which the action is brought. The bill would authorize a lien claimant to take certain actions after payment default by the lien debtor, including notifying any person obligated on any proceeds subject to the lien to make payment to the lien claimant. The bill would define a “person obligated on any proceeds” for purposes of provisions governing dairy cattle supply liens. The bill would authorize a lien debtor to secure a release of a lien by paying the amount secured by the lien or by depositing with the Secretary of ~~State~~ *Food and Agriculture* a bond, as specified. The bill would require a lien claimant that receives proceeds pursuant to a notice that is provided to a person who is obligated on the proceeds to account to, and pay the lien debtor for, any surplus, and ~~shall~~ *would require the lien debtor to* be liable for any deficiency.

(7) The bill would provide that the provisions described above shall apply prospectively to all contracts entered into on or after January 1, 2013.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 57401 of the Food and Agricultural Code
- 2 is amended to read:
- 3 57401. (a) The definitions in this section govern the
- 4 construction of this chapter.
- 5 (b) “Feed or materials” means commercial feed, grain, forage,
- 6 feed ingredients, mineral feed, drugs, animal health products,
- 7 customer-formula feed, any mixture or preparation for feeding

1 animals, any of the constituent nutrients of an animal ration, or
2 any other food which is used for the feeding of dairy cattle.

3 (c) “Person obligated on any proceeds” means a handler, as
4 defined in Section 61826, who is in possession of proceeds.

5 (d) “Proceeds” means funds derived from the sale of milk or
6 milk products which are payable to the lien debtor by the possessor
7 of the funds, except for any of the following:

8 (1) Deductions for taxes, fees, and assessments.

9 (2) Funds due or owing milk processing cooperative associations
10 organized and operating pursuant to Chapter 1 (commencing with
11 Section 54001).

12 (3) Funds retained by the cooperative association.

13 (4) Deductions made pursuant to a court order.

14 (5) Deductions due or owing the buyer of the milk for hauling
15 services provided by the buyer pursuant to subdivision (e) of
16 Section 62096 and deductions due or owing the buyer for the
17 testing of milk for purposes of payment pursuant to Section 34231.

18 (e) “Raising or maintaining of dairy cattle” means feeding,
19 pasturing, caring for, and managing dairy cattle kept or raised for
20 use or profit.

21 (f) “Reasonable or agreed charges” means the agreed price, if
22 any, for the feed and materials sold to the lien debtor, at the lien
23 debtor’s request. If there is no agreed price or a method for
24 determining price which is agreed upon, “reasonable or agreed
25 charges” means the reasonable value of the feed or materials as of
26 the date of delivery.

27 SEC. 2. Section 57402 of the Food and Agricultural Code is
28 amended to read:

29 57402. A person who provides feed or materials to aid the
30 raising or maintaining of dairy cattle or offspring therefrom has a
31 lien upon the proceeds of the milk or milk products produced from
32 the dairy cattle, for the reasonable or agreed charges for the feed
33 or materials provided and for the costs of enforcing the lien.
34 However, the amount of charges secured by the lien cannot exceed
35 an amount equal to the reasonable or agreed charges for feed or
36 material provided within a 60-day period, and only two providers
37 of feed or materials shall have an enforceable lien at any time
38 according to the priority set forth in Section 57406. Only one lien
39 under this chapter per dairy producer is available per affiliated
40 business supplier.

SEC. 3. Section 57405 of the Food and Agricultural Code is amended to read:

57405. The lien created by this chapter shall be perfected by the filing of a notice of claim of lien with the Secretary of State and service of the notice of claim of lien pursuant to ~~all the provisions of this section~~ *subdivision (e)*.

(a) The person who provides feed or materials may, at any time, file in the manner and at the place set forth in this section, the notice of claim of lien.

(b) The notice of claim of lien shall, at a minimum, set forth all of the following information:

(1) The name and address of the lien claimant.

(2) The last known name and address of the lien debtor.

(3) The location of the dairy to which the feed and materials were provided.

(4) That the lien claimant has a dairy cattle supply lien pursuant to Section 57402.

(c) The notice of claim of lien shall be filed on a form which is the standard form of original financing statement prescribed by the Secretary of State pursuant to Section 9521 of the Commercial Code. The standard form shall be completed with the following changes:

(1) The lien claimant may be identified either as lien claimant or as secured party.

~~(2) The form shall be signed by the lien claimant and need not be signed by the debtor.~~

~~(3)~~

(2) In the space for the description of the collateral there shall instead be entered the statement substantially as set forth in paragraphs (3) and (4) of subdivision (b).

(d) The notice of claim of lien shall be filed, indexed, and marked in the office of the Secretary of State in the same manner as a financing statement is filed, indexed, and marked pursuant to Section 9519 of the Commercial Code.

(e) (1) The lien claimant shall provide written notice of the claim of lien to the following persons within 10 days of the date of the filing with the office of the Secretary of State:

(A) The lien debtor.

1 (B) Any person from which the lien claimant has received,
2 before the lien claimant files the notice, notification of a claim of
3 an interest in the proceeds.

4 (C) Any other secured party or lienholder that, 10 days before
5 the filing of the notice, held a security interest in or other lien on
6 the proceeds perfected by the filing of a financing statement that
7 satisfied all of the following conditions:

8 (i) The statement identified the proceeds by referring to all
9 assets, all personal property, goods, farm products, milk, or milk
10 products, or otherwise identified the proceeds by any other
11 description sufficient pursuant to Section 9108 of the Commercial
12 Code.

13 (ii) The statement was indexed under the debtor's name as of
14 that date.

15 (iii) The statement was filed against the debtor covering the
16 proceeds as of that date and was filed in the office or offices in
17 which a financing statement may be filed pursuant to Section 9501
18 of the Commercial Code.

19 (D) Any other secured party that, 10 days before the filing of
20 the notice, held a security interest in the proceeds perfected by
21 compliance with a statute, regulation, or treaty described in
22 subdivision (a) of Section 9311 of the Commercial Code.

23 (2) If the lien debtor is an entity, notice shall be given to the
24 lien debtor's registered agent for service of process. If the lien
25 debtor is an individual or general partnership, the notice shall be
26 given at any address at which the individual conducts business.

27 (3) *Any notice to be given to a person pursuant to subparagraph*
28 *(B) of paragraph (1) shall be given to that person at the address*
29 *set forth in the notification of claim of interest given by that person*
30 *or, if no address is set forth, to the person's registered agent for*
31 *service of process if the person is an entity or at any address at*
32 *which the person does business if the person is an individual or*
33 *general partnership.*

34 (4) *Notice given to a secured party pursuant to subparagraph*
35 *(C) of paragraph (1) shall be given to the secured party at the*
36 *address set forth in the financing statement on file for the secured*
37 *party.*

38 (5) *Notice to be given to a secured party pursuant to*
39 *subparagraph (D) of paragraph (1) shall be given to the secured*
40 *party at the address set forth in the document creating the*

1 *perfection and compliance or, if no address is set forth, to the*
2 *secured party's registered agent for service of process if the*
3 *secured party is an entity or at an address at which the secured*
4 *party does business if the secured party is an individual or general*
5 *partnership.*

6 (f) For the purpose of the Secretary of State's index pursuant
7 to Sections 9515, 9516, and 9522 of the Commercial Code and for
8 the purpose of the issuance of a certificate pursuant to Section
9 9519 or 9528 of the Commercial Code, the Secretary of State shall
10 identify a notice pursuant to this section as a financing statement.

11 (g) Within 20 days after a lien claimant receives a demand from
12 a lien debtor, the lien claimant shall send to the lien debtor a
13 termination statement for the notice of claim of lien or file the
14 termination statement in the office of the Secretary of State, if the
15 lien perfected by the notice of claim of lien has terminated pursuant
16 to the provisions of Section 57403. Upon the filing of a termination
17 statement with the office of the Secretary of State, the notice of
18 claim of lien to which the termination statement relates ceases to
19 be effective.

20 SEC. 4. Section 57406 of the Food and Agricultural Code is
21 repealed.

22 SEC. 5. Section 57406 is added to the Food and Agricultural
23 Code, to read:

24 57406. The priority of conflicting interests, agricultural liens,
25 and the agricultural lien created under this chapter shall be
26 governed by subdivisions (a) to (f), inclusive, of Section 9322 of
27 the Commercial Code.

28 SEC. 6. Section 57412 of the Food and Agricultural Code is
29 repealed.

30 SEC. 7. Section 57413 of the Food and Agricultural Code is
31 amended to read:

32 57413. (a) After payment default by the lien debtor, the lien
33 claimant may foreclose on a lien created by this chapter in the
34 following manners:

35 (1) The lien claimant may foreclose in an action to recover the
36 reasonable or agreed charges for feed and materials delivered. In
37 such an action, the final judgment may be enforced pursuant to
38 Title 9 (commencing with Section 680.010) of Part 2 of the Code
39 of Civil Procedure.

(2) Provided that the lien claimant provides concurrent notice to the lien debtor and the parties set forth in subdivision (e) of Section 57405, the lien claimant may notify any person obligated on any proceeds subject to the lien created under this chapter to make payment to, or otherwise render performance to or for the benefit of, the lien claimant, provided that the lien claimant may not demand that payment or performance be made at any time prior to 15 calendar days following the date of notice.

(3) The lien claimant may enforce the obligations of any person obligated on any proceeds subject to the lien created under this chapter and exercise the rights of the lien debtor with respect to the proceeds and any property that secures the right to the proceeds subject to the lien created under this chapter.

(b) A lien claimant that receives proceeds pursuant to a notice provided pursuant to paragraph (2) of subdivision (a) shall account to, and pay the lien debtor for, any surplus, and *the lien debtor* shall be liable for any deficiency.

(c) Nothing in this chapter shall prohibit a lien claimant from applying pursuant to Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure for a right to attach order and a writ of attachment, or temporary protective order, by filing an application for the order, writ, or temporary protective order with the court in which the action is brought.

(d) Notwithstanding the receipt of a notice pursuant to paragraph (2) of subdivision (a), a person obligated on any proceeds subject to a lien created under this chapter shall have no liability to a lien claimant for failure to comply with that notice to the extent that the person obligated on the proceeds pays the proceeds subject to the notice as follows:

(1) To a person holding a lien or security interest that is prior to the lien of the lien claimant issuing the notice.

(2) In satisfaction of a contractual assignment or valid notice provided pursuant to Section 9607 of the Commercial Code has been received from the person obligated on the proceeds prior to the receipt of the notice pursuant to paragraph (2) of subdivision (a).

(e) A person obligated on any proceeds subject to the lien created under this chapter and who makes payment pursuant to the notice required by paragraph (2) of subdivision (a) shall not be deemed, to the extent of that payment, to be in violation of the

1 applicable provisions of law relating to failure to pay the amounts
2 to the lien debtor and shall not be deemed to have engaged in an
3 unlawful trade practice.

4 (f) A lien debtor may secure a release of a lien created under
5 this chapter by doing one of the following:

6 (1) Paying the amount secured by the lien.

7 (2) Depositing with the Secretary of ~~State~~ *Food and Agriculture*
8 a surety bond that is executed by the lien debtor as principal and
9 by a surety company that is qualified and authorized to do business
10 in this state as a surety in an amount that equals the current amount
11 secured by the lien. If the lien debtor fails to pay the claims, up to
12 the amount of the bond, of the lien claimant within 35 days after
13 entry of final judgment in favor of the lien claimant, ~~the bond shall~~
14 ~~be in an amount sufficient to cover the liability to the lien claimant,~~
15 ~~and~~ *surety* shall pay all lawful claims that are covered by the
16 amount of the lien, *up to the amount of the bond*, if an action is
17 filed on the bond.

18 SEC. 8. The provisions of this act shall apply prospectively to
19 all contracts entered into on or after January 1, 2013.